



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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January 13, 2012

Ms. Kimberly A. Vessels
Assistant City Attorney
50 North Fifth Street
Richmond, Indiana 47374

Re: Informal Inquiry 12-INF-01; City of Richmond

Dear Ms. Vessels:

This is in response to your informal inquiry regarding the City of Richmond ("City"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

The City's zoning and permit offices occasionally receives requests for records from various "due diligence" companies. Typically with these requests, the companies also submit a response form and ask that the City complete the form with the requested information. Alternatively, a request will be made for a compliance letter for a specific address. The City has inquired whether it would violate the APRA by imposing a fee to complete the form that has been submitted or create a compliance letter in response to the request. This proposed fee would be separate from any copying costs the City currently charges pursuant to the APRA. In the event that any public records are sought in connection with a compliance letter, the City would charge a copying fee for the records and a separate fee for the compliance letter. The City does not in any fashion seek to violate the letter, intent, or spirit of the APRA in connection with the proposed fee and seeks the guidance of the Public Access Counselor's prior to its implementation.

ANALYSIS

The APRA permits a public agency to charge a fee for copying a record, but sets certain limits on the amount of the copying fee depending upon the type of public agency. *See* I.C. § 5-14-3-8. For public agencies that are not state agencies, the fee for copying documents may not exceed the greater of ten cents (\$0.10) per page for copies that are not color copies or twenty-five cents (\$0.25) for color copies; or the actual cost to the

agency of copying the document. *See* I.C. § 5-14-3-8(d). However, the APRA also provides that notwithstanding other provisions within section 8 of the APRA, a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court. *See* I.C. § 5-14-3-8(f). Thus, where a specific statute other than the APRA provides a public agency with the authority to charge a fee that exceeds the “actual cost,” the public agency may charge the statutory fee without violating the APRA.

The APRA requires that a request for inspection or copying must identify with reasonable particularity the record being requested. *See* I.C. § 5-14-3-3(a). While the term “reasonable particularity” is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21; 00-FC-15; 09-FC-24; 11-FC-12*. Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for information may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party’s request. *Opinion of the Public Access Counselor 04-FC-38*.

If a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. *See Opinions of the Public Access Counselor 01-FC-61 and 08-FC-113*. A public agency is not required to conduct research in responding to a records request. *See Opinions of the Public Access Counselor 03-FC-146 and 05-FC-25*.

Here, the City has proposed charging a fee to those persons seeking a compliance letter for a specific address or to fill out a form provided by the requestor. This fee would be separate from any fee charged for the actual production of records. As the City is not required to create a new form or conduct research in response to an APRA request, it is my opinion that the City would not be violating the APRA by charging a fee to create a compliance letter or fill it a form provided by the requestor. In essence, the City will be performing a service by composing the letter or filling out the requested form, not providing a public record that it maintains in response to a properly submitted records request. As such, the APRA would not be applicable and would not be violated should the City commence with charging a separate fee.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "H".

Joseph B. Hoage
Public Access Counselor